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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,839	10/11/2001	Andrew Egendorf	7178-207	4483

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EXAMINER

FELTEN, DANIEL S

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/975,839	EGENDORF, ANDREW	
	Examiner	Art Unit	
	Daniel S Felten	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-101 and 166-228 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-101 and 166-228 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

1. Receipt of the amendment filed June 16, 2003 amending claims 31, 44, 45, canceling claims 102-165 and adding claims 166-228. Claims 31-101 and 166-228 are pending in the application and are presented to be examined upon their merits.
2. Comments on the courtesy copy of the new cited Fraser et al reference (US 5,329,589) have been received and have been made of record in the application file.

Allowable Subject Matter

3. The indicated allowability of claims 31-165 are withdrawn in view of the newly discovered reference(s) to address the recited allowable subject matter. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 31-101 and 166-228 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraser et al (US 5,329,589) in view of Clearwater (US 5,394,324).

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Fraser is a third party payment system for wherein communication systems are used to mediate transactions preferably via telephones and, "...**data networks** in which a network node can initiate a sessions and video networks in which *there are interactions between the network and the user.*" (see Fraser et al., col. 5, ll. 57-60). Fraser fails to disclose that the buyer and seller communicate over the Internet, however, the use of data networks in Fraser suggests that it would have been obvious for an artisan of ordinary skill at the time of the invention to modify Fraser with an Internet network because an artisan at the time of the invention would have been motivated to seek the latest technology of communication systems so as to improve the mediation of different types of transactions involving a large number of entities (buyers and sellers) reachable by via a communication system. Thus to modify Fraser to use the notoriously old and well known Internet would have provided an obvious alternative to the telephone network and other cited data networks disclosed by Fraser, being an obvious expedient to one of ordinary skill in the art.

Claims 31, 32, 4, 45, 166, 167, 172, 173, 178, 184, 185, 190, 191, 196, 197, 202, 203 and 215-228, et al, require that the customer initiate authorization to charge. Fraser discloses in one embodiment that the credit card payment has the vendor, not the buyer, providing the transaction amount to the third party (see Fraser, fig. 4, col. 8,

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ll. 53-55). However, in another embodiment, Fraser also suggests an auction where customers can make bids (see Fraser, col. 14, ll. 14-28). Clearwater discloses an auction-based control system where the buyer pays an amount of money via credit or debit (see Clearwater, col. 7, ll. 35-46). Since it is natural that the amount for a particular bid must come from the bidder, it would have been obvious to integrate the aforementioned feature of Clearwater into Fraser whereby customers could make bids using real money. Thus such a modification would be considered an obvious expedient to one of ordinary skill in the art.

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Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Daniel S. Felten** whose telephone number is (703) 305-0724. The examiner can normally be reached between the hours of 7:00AM to 5:30PM Monday-Thursday. Any inquiry of a general nature relating to the status of this application or its proceedings should be directed to the Customer Service Office (703) 306-5771, or the examiner's supervisor **Vincent Millin** whose telephone number is (703) 308-1065.

Response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

for formal communications intended for entry, or (703) 305-7687, for informal or draft communications, please label A Proposed or A Draft. Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be

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addressed to [daniel.felten@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1 195 OG 89.



DSF

January 14, 2004